

DANGEROUS CROSSING

• Conditions Impacting the Flight of
• Tibetan Refugees // 2003 Update



	Introduction	2
	Why Tibetans Flee	4
	The Journey	7
China Takes Steps to Check the Flow of Tibetan Refugees		12
New Refugee Prison in Shigatse, Tibet		16
	The May 31 Refoulement Incident	19
	International Reaction	22
Direct Pressure from US Congress Yields Long-Sought Written Policy		24
	Imprisonment in Tibet	26
	Refoulement of Uighurs from Nepal	29
	Continued Forced Repatriations	30
Tibetans Legally Residing in Nepal Continue to Face Difficulties		33
	<i>Losar: Tibetan New Year</i>	34
	The Dalai Lama's Birthday	35
	Public Opinion in Nepal about Tibetans and China	36
	Tibetans Jailed on Immigration Charges	38
	Tibetan refugees and India	39
	Recommendations and Benchmarks	40
	Appendix	45
	Endnotes	46

Cover Photo: May 31, 2003, 1:30 pm, Kodari, Nepal. Nepalese police return from the Tibet side of the Nepal-China Friendship Bridge after handing over 18 Tibetans to Chinese border security. The handcuffs around the plain-clothed policeman's neck had been used to shackle the hands of the Tibetans to the seat in front of them during the 5 hour bus ride from Kathmandu.

Photo courtesy of Nick Dawson.

- The following report covers events and trends during the calendar year 2003 and is the International Campaign for Tibet's third annual examination of *Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees*. The report is primarily based on firsthand observations, personal interviews and research conducted by ICT field staff on both sides of the Tibet/Nepal border and in India, and from visits to the region conducted by ICT's Washington, D.C., Amsterdam and Berlin staff. This update also draws on information from U.S., Nepalese, Chinese and Tibetan exile government sources, and from representatives of the United Nations High Commissioner for Refugees (UNHCR), and concludes with ICT's recommendations to these same entities and benchmarks based on previous recommendations. Much of the information about refugee conditions and experiences is collected directly by ICT through interviews and fieldwork in Nepal, India and Tibet. In some cases, due to the sensitive nature of the information, ICT source information cannot be directly identified in the context of this report.

ICT commentary on the treatment of Tibetan refugees reflects the principles enshrined in international refugee covenants, including the fundamental principle of *non-refoulement*¹: no refugee can be forcibly returned to his or her country of origin or to any country where his or her life or freedom is under threat. The Kingdom of Nepal and the Republic of India are not parties to the 1951 Convention on Refugees or the 1967 Protocol; the People's Republic of China is a party to both.² Efforts by the UNHCR and others to promote the adoption of a regional protocol to establish procedures for granting of refugee status to asylum seekers and to guarantee them fair treatment did not progress in 2003.

Prior to 2003, Nepal's treatment of refugees was ostensibly governed by a so-called "gentlemen's agreement." The "gentlemen's agreement" was an informal agreement, dating from 1989, between the government of Nepal and the UNHCR office in Kathmandu that established a mode of cooperation by which Tibetan refugees could safely transit through Nepal to India. Under this arrangement, Tibetans detained by Nepalese authorities at or near the Tibet/Nepal border are to be handed over directly, or through Nepal's Department of Immigration (DOI), to the UNHCR. The UNHCR then establishes the Tibetans' status as "persons of concern," which provides a measure of protection during a brief stay in Nepal, while awaiting transit across the border to India.³

As was the case in 2001 and 2002, there were troubling departures by Nepalese authorities from the “gentlemen’s agreement.” ICT reported on a number of refoulements and a generally worsening climate for Tibetans in Nepal throughout early 2003. The disturbing trend in Nepalese treatment of refugees that ICT had been documenting for several years culminated in the May 2003 forcible return of 18 Tibetan refugees to Chinese custody in Kathmandu. This refoulement caused international outrage, resulting in official demarches to both the Nepalese and Chinese governments in Washington, Kathmandu, Beijing and other capitals around the world, and a strong statement of denunciation from UNHCR headquarters in Geneva.

This particular incident of refoulement had lasting implications. International criticism led several Western governments to threaten either to impose sanctions or withdraw preferences unless the Nepalese government promised to take steps to end the forced repatriation of Tibetan refugees. The international pressure, particularly travel embargoes and other trade-related initiatives, was widely condemned in the Nepalese media.⁴

At the same time, the international community was well aware of the serious institutional challenges and instability within the Nepal government. During 2003, the Nepalese government collapsed several times and King Gyanendra continued his efforts to consolidate power in the face of weak democratic institutions and a growing Maoist insurgency.⁵ As one Nepalese journalist posited to ICT, “there is no chain of command and the power vacuum within our government allows for small men to take big decisions.”

Security and economic pressures also mounted within Nepalese civil society and Tibetans living therein as the Maoist insurgency spread from the countryside to the cities. The U.S. Ambassador to Nepal, Michael Malinowski, predicted that a Maoist victory was possible and would establish a regime reminiscent of Cambodia’s Pol Pot.⁶ Against this background, China stepped in with increased assistance to and solidarity with the Nepalese government, particularly new initiatives and infrastructure projects to shore up border security and to promote cross-border trade.

In spite of a heavier Chinese police presence on the Tibet/Nepal border, the number of Tibetan refugees documented by UNHCR in 2003 increased substantially from the annual counts of 2001 and 2002. In 2003, the UNHCR and Tibetan Refugee Reception Center (TRTC) in Kathmandu processed approximately 3,000 Tibetans as “persons of concern,” and it is likely that other Tibetans moved through Nepal outside this system.⁷ In November and December 2003, the combination of a large number of Tibetans arriving at the TRTC and new procedures for processing the refugees out of Nepal created a backlog of refugees that far exceeded the TRTC’s capacity to provide adequate shelter, food, and other emergency care. As in the past, most refugees were monastics seeking freedom of religious practice and children seeking a Tibetan language education.⁸ ■

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- The U.S. State Department’s *Country Reports on Human Rights Practices for 2003* describes the government of the People’s Republic of China as “authoritarian” and the human rights situation in Tibet as “poor.”⁹ The report finds that systemic abuses and denial of basic human rights are pervasive in Tibetan areas under Chinese control.¹⁰ This bleak situation has also been well documented by numerous international human rights organizations.¹¹

China governs Tibet through a political and economic system that devalues Tibetan religion, culture and language. China is currently attempting a radical economic and social re-engineering of the Tibetan plateau, through economic development policies that focus on: urbanization of the Tibetan population; rapid economic growth based on unsustainable subsidies from the central government for large-scale infrastructure projects; extractive industries such as mining and logging; and massive in-migration of non-Tibetans onto the Tibetan plateau. Tibetans’ illiteracy in Mandarin Chinese – the language of commerce in the PRC – gives Chinese migrants a major advantage in the competition for even the most basic jobs. Even in Tibetan areas, many Tibetans cannot compete for skilled and semi-skilled positions due to language barriers. The resulting social, economic and cultural dislocation and marginalization experienced by many Tibetans is a leading cause of their flight to exile.

Educational opportunities for Tibetans are also lacking. The U.N. Special Rapporteur on the Right to Education, who visited China in September 2003, found the structure of the Chinese educational system to be



December 2003, Kathmandu, Nepal. ICT-led delegation of U.S. congressional staff are greeted by some 1,000 Tibetan refugees at Tibetan Refugee Transit Center.

problematic for Tibetans.¹² When the Chinese government attacked her findings during the presentation of her report at the U.N. Commission on Human Rights, the Rapporteur characterized the situation of literacy in Tibet as “horrendous.”¹³ Tibetan children are taught the national curriculum in the Tibetan language in primary school, but they must be literate in Chinese to access higher educational and economic opportunities.¹⁴ Beyond primary education, Tibetan language is typically an elective class, and all other subjects are taught in Mandarin Chinese. Tibetan children, lacking the Chinese language skills to understand their math and science classes in upper grades, fall behind and lose interest in school. Their poor performance serves to reinforce Chinese stereotypes of Tibetans as stupid and backwards.

The Special Rapporteur’s report also took China to task for the increased “privatization” of public education and the widespread practice of charging fees for what is legally supposed to be compulsory, free public schooling.¹⁵ Tibetan parents accompanying minor children into exile frequently complain of lack of access to education for their children, and highlight the exorbitant fees charged by the local schools.

The economic and social pressure on Tibetans is reinforced by a coercive, pervasive police and public security presence that is focused on maintaining the Communist Party’s control and silencing popular Tibetan



Solo Khumbu area, Nepal. Two young cousins sent out of Tibet by their parents for education in Tibetan refugee schools in India.

influences. In December 2002, a prominent Tibetan lama, Tenzin Delek Rinpoche, was sentenced to death with a two-year suspension for his alleged involvement in a series of small bombings in Sichuan province. The judicial proceedings against him failed to meet minimum standards of due process¹⁶ and China has produced no evidence linking him to any crime.¹⁷ Credible reports indicate that Tenzin Delek's arrest and sentencing were politically motivated, reflecting his influence in the Tibetan community where he had worked for many years to bolster Tibetan institutions, including monasteries and schools, and his loyalty to the Dalai Lama.¹⁸

The case of Tenzin Delek Rinpoche demonstrates how far Chinese authorities will go to manage and contain Tibetan Buddhism under the control of the atheist Communist Party. Democratic Management Committees (DMCs), under the control of the local party leadership, run most monastic institutions in Tibet. The DMC often determines how many monks will be permitted in a monastery, how the funds of the monastery will be raised and spent, and most key aspects of the monastery's operations. Religious leaders who cooperate with the Party are rewarded as "patriotic lamas," given political positions, funds to rebuild or expand their monasteries, and freedom to travel, as long as they stay within the government's parameters for religious practice.

For monks and nuns, admission to a monastery generally involves signing a pledge denouncing the Dalai Lama, embracing the boy selected by the Chinese government as the 10th Panchen Lama, and stating that Tibet

is an inalienable part of the PRC. To a devout Tibetan Buddhist monk or nun, the first two aspects of this pledge amount to blasphemy and this alone prompts many to see exile as the only possible means of obtaining a complete religious practice. The Chinese government has also placed severe restrictions on average Tibetans' ability to express religious devotion to His Holiness the Dalai Lama, and has taken extreme measures to control the selection of the reincarnations of other important lamas. When asked why they fled, refugees often cite their lack of access to the Dalai Lama – both physically and spiritually – inside Tibet.

For former Tibetan political prisoners, the decision to flee often reflects their inability to live without harassment by local authorities or otherwise create a meaningful life for themselves after prison in Tibet. As former political prisoner Ngawang Sangdrol explained, “Even if a prisoner of conscience is released from prison, they are still not free. They are not allowed to find employment, education or receive medical treatment. They do not even have freedom of movement.”¹⁹

The result of these and other Chinese policies that devalue Tibetan culture and criminalize Tibetan nationalism and religion is a generation of Tibetans who are encouraged to distance themselves from their identity and heritage in order to avoid persecution and to assimilate into an increasingly Sinocized society. As a result, many Tibetans find themselves in conflict with the effects of unchecked Chinese migration and other Chinese government policies for development on the Tibetan Plateau. Displaced and disadvantaged, many Tibetans see life in exile as the only means of securing a future rooted in the Tibetan identity. ■

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- In 2003, Tibetans faced new considerations in making the choice to seek freedom in exile, and new obstacles on their journey. Depending on their point of departure in Tibet, the journey to the Tibet/Nepal border can take weeks or months. Most Tibetans cross over the Himalayas along commonly used escape routes, primarily crossing through the Nangpa glacial pass, rising more than 19,000 feet above sea level to the west of Mount Everest in the Solu Khumbu region of Nepal. They follow an ancient trading route still used today by Tibetan traders leading their yak caravans from Tingri, Tibet. From Tingri, the passage through Nangpala's treacherous terrain would take two days under ideal conditions. However, to avoid capture by Chinese border guards, refugees travel some areas at night, stretching the length of the journey to five to ten days. It takes



November 2003, Solu Khumbu region, Nepal, elevation 13,000 feet. Two Tibetan women and an 8-year old girl had been walking 9 days and would continue to walk another 11 days before reaching a road and boarding a bus for a day's ride to Kathmandu. The trail visible on the far left side of the photo leads toward Namche Bazaar.

another two days to cross the frozen Nangpa glacier, with Kathmandu still three weeks away on foot, passing through the Himalayan foothill towns of Namche Bazaar, Lukla, and Jiri.

Other Tibetans escapees use a route through the towns of Dram (on the Tibet side) and Kodari (on the Nepal side). Here, Tibetans must cross the connecting China-Nepal Friendship Bridge undetected by either Chinese or Nepalese authorities. From this crossing, Kathmandu is a week to ten days walk, or six hours by bus, passing through the Nepalese border towns of Kodari, Tatopani, and Barabisi. A smaller percentage of Tibetans come into Nepal through Mustang or the Humla region, where they must evade Chinese border police in Purang along the Karnali River.

As in previous years, most Tibetans – approximately 70 percent in 2003 – made the journey during the winter months when the snowy mountain passes and glacial areas are frozen hard. During the warmer months, snow can turn to slush and clouds and fog can obscure trails and deadly crevasses. To hide their intentions from local authorities in Tibet, Tibetans often carry little food or clothing when fleeing. Under these conditions, hypothermia, snow blindness, frostbite, as well as injuries caused by slipping and falling are common, and injury can mean being abandoned by the hired guide, who is often the key to evading border security.

During the months of frigid temperatures, the Chinese People's Armed Police (PAP) patrolling the Tibet side of the border are believed to be less active in their patrols. The PAP is responsible for China's internal security, the protection of state installations – including prisons – and is the primary security force patrolling the escape passes. In 2003, the PAP took new measures to increase border security and block access to remote mountain routes. A new prison for Tibetan refugees apprehended by the PAP was fully operational outside the town of Shigatse in 2003. Security on the Nepal side of the border was also enhanced by the presence of army troops, armed police and regular police, working under the “unified command” of the Royal Nepal Army. The Army has been deployed throughout the countryside in recent years to counter the Maoist insurgency and stifle smuggling. In addition, some guides took themselves out of business after the May 31, 2003 refoulement due



Resting after crossing over the Nanga mountain pass.

to the increased risks associated with this profession as the Chinese continued to harshly prosecute Tibetans who are identified as guides. As news of the May 31, 2003 refoulement reached Tibetans inside Tibet, Nepal's obvious collusion with China in this event was incorporated into their calculations on the risks of seeking asylum via Nepal.

There were other difficulties for Tibetan refugees on the Nepal side due to the changed security environment. After the May 31, 2003 refoulement, there was a spate of articles in the Nepalese press that referred to the "trafficking" of Tibetans into Nepal. Echoing a long-time contention by the Chinese government, pro-China personalities in the Nepalese elite picked up the "trafficking" line in support of the government's decision to refoule the 18 Tibetans and further crackdown on the illegal entry of Tibetans into Nepal. In one article, a journalist well known in Kathmandu for his Chinese sympathies accused his fellow Nepalese of profiting from this supposed trade in Tibetans. He quotes Bahadur Dahal, the head of the Nepalese Red Cross Society's Dolakha branch, as saying, "[A]s the Nepalese themselves are found to have [become] involved in illegal earning by helping the Tibetans to escape, the problem has become



Elevation 17,000 feet. Two days walk past the glacier on Nangpa la, the women encounter two other Tibetans who had been left behind by a larger group of Tibetan refugees because they walked too slow. A moraine, or large area covered by rocks and debris carried down by the glacier, is in the background.



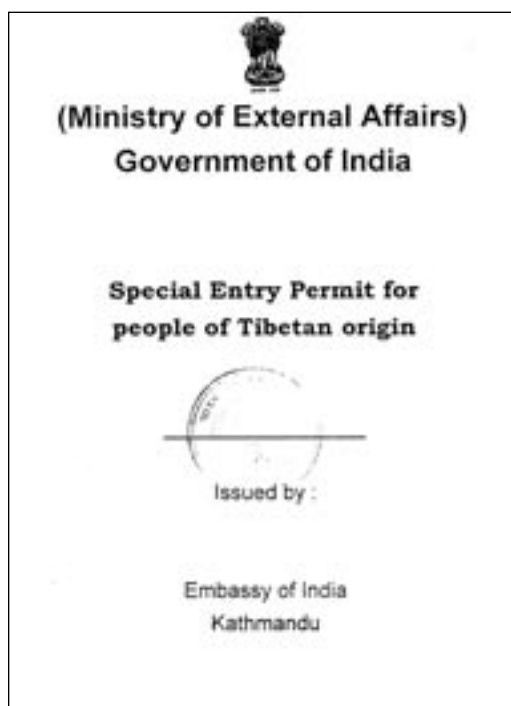
One of the many bridges in the Solu Khumbu region, Nepal. Tibetan refugees en route to Nepal encounter radically different ecology and weather – from glacial to alpine to mountain jungle.

complicated. They help Tibetans sneak into Kathmandu taking advantage of the difficult terrain of Dolakha district and catching the police administration off guard. They claim from 40,000 to 100,000 rupees for ensuring a safe passage for a Tibetan to the place of his choice.”²⁰

In 2003, the Government of India also heightened its involvement in the affairs of Tibetan refugees. In the spring, the Indian Ministry of External Affairs began to require and issue, through the Indian Embassy in Kathmandu, a “Special Entry Permit to people of Tibetan origin” to facilitate legal border crossing from Nepal into India and the processing of their legal status as Tibetan refugees in India. To secure the permit, Tibetans must sit for a brief interview with a consular officer at the Indian Embassy in Kathmandu. No more than 15 refugees are interviewed in a day, which significantly slowed the movement of Tibetans through the TRTC in Kathmandu and onward to India. During the winter season, as the number of refugees arriving daily increased dramatically, the delays in processing Tibetans through the Indian Embassy created a massive backlog. From September 2003 to year’s end, hundreds of Tibetans were forced to sleep outside and in the corridors of the TRTC. In December 2003, there were more than 1000 refugees at the TRTC, a facility that is designed for a maximum occupancy of approximately 300 persons, and many had been there for several months. ■

- In 2003, China and Nepal continued efforts to strengthen both trade and diplomatic links. In April, China's official news agency reported a friendly exchange in Tibet between Shankar Prasad Pandey, Nepal's Consul General to Tibet, and Xu Mingyang, Vice Chairman of the Tibet Autonomous Region, during which Xu professed profound friendship and volunteered that "Nepal has always supported the one-China principle."²¹ In turn, Pandey made clear Nepal's eagerness to expand its trade over the 875-mile (1,400-kilometer) Himalayan border.²² In 2003, China reportedly provided assurances that its annual financial support in the amount of Nepalese rupees 710 million (approximately US\$10 million) to Nepal would continue²³ and agreed to invest in new projects such as the extension of trolley bus services, upgrading of the "ring road" around Kathmandu, and construction of a hospital for civil servants in Kathmandu.²⁴

Nepal and China also agreed to open two more border checkpoints in Mustang and Sankhuwasabha, increasing the total number to six.²⁵



Cover of Government of India Special Entry Permit. The 8-page booklet contains a photograph and personal details of the bearer, and general instructions for its use.

On November 14, 2003, undeterred by the international outcry created by the previous May's refolement, the Chinese Ambassador in Kathmandu, Sun Heping, expressed the position that "There is no Tibetan refugee problem between us (China and Nepal) but those who have been creating problems are illegal immigrants crossing over to Nepal."²⁶ In any case, Sun told reporters, "We are going to make necessary arrangements to stop such illegal immigrants."²⁷ Sun was further quoted in the Nepalese journal, *The People's Review*, as saying that Tibetan refugees entering Nepal "do so forcibly and without any valid reason" and, Tibetan refugees "have already become an international nuisance and problem all over the world."²⁸ These arguments are resonating with some Nepalese officials, for whom the Chinese line provides a convenient response to Western critics. During an ICT-led congressional staff delegation to Nepal in December 2003, the staffers were repeatedly told by Nepalese government officials that many of the Tibetans crossing the border were not refugees, but were instead economic migrants who were being trafficked, or "criminals."

While China is making political arguments in Kathmandu to encourage Nepal to create a less open environment for Tibetans, they also continue to upgrade physical capabilities for apprehending Tibetans attempting to cross the border.

The main PAP border patrol station in the Tingri area of Tibet is currently located at Tragmar, some 25 kilometers northwest of Nangpa-la. Tibetans need several days to negotiate the area and often do so by night to avoid the border patrols. In 2002, the Tragmar patrol station installed floodlights to illuminate the area when border security are patrolling. At Tragmar border patrol station, small concrete cells are used to jail Tibetans caught trying to flee into Nepal. Reports from Tibetans who have been held in Tragmar indicate that captured Tibetans are usually jailed at Tragmar for two to three days before being transferred to a prison in Shigatse where they are further detained for three to five months.

In October 2003, ICT researchers were able to document that the Chinese government had completed construction of a motorable road from Drakmar to Gyaplung, just 6 kilometers or a day's trek north of the glaciated Nangpa mountain pass. At 16,000 feet above sea level, Gyaplung is a traditional Tibetan encampment made of low-rise stone huts used by traders along the ancient yak caravan trading route. Before the road was built, Chinese border guards had to pitch tents in the area

when patrolling, as there are no permanent structures. The new road should allow transport of infrastructure building materials to this high mountain region. According to local reports, road construction was a joint effort of People's Liberation Army (PLA) and the PAP, and the laborers were Chinese.

Some observers believe that road construction and other issues related to refugee routes were behind the refoulement incident in May 2003. Chinese authorities may have extracted information from these Tibetans regarding their escape route. A permanent border station at Gyaplung would enhance the PAP's ability to monitor this key escape route.

The Chinese government has put a high priority on efforts to patrol the border. On December 29, 2003, the English-language website of the *People's Liberation Army (PLA) Daily* reported that Chinese Prime Minister Wen Jiabao and Central Military Commission Chairman Jiang Zemin conferred the honorary title of "Model Frontier Police Substation" on the Pali (Tib: Phari) Frontier Police Substation under the Public Security and Frontier Defense Contingent of the TAR.²⁹ The Phari station is situated in a strategic position overlooking the Dromo/Chumbi Valley, Tibet's traditional gateway to Sikkim. According to the report, the honor was bestowed on the Phari station specifically for "safeguarding national sovereignty, maintaining social stability and promoting economic development and the unity of ethnic groups in the frontier areas."³⁰ While the report states that "[i]n the past ten years and more, there has not been a single criminal case or public security cases occurring in its jurisdiction area", it euphemistically refers to the station's success in having "settled several dozens frontier public security issues."³¹ In the Chinese language version of this report, however, the honor cited the interception of "people attempting to flee the country" as a border defense task fulfilled by the post "with flying colors."³² This *Xinhua* report concluded with praise for the border station's achievement in maintaining "revolutionary spirit in a place with insufficient oxygen."³³

In 2003, there were new reports of Chinese border police aggressively pursuing Tibetan refugees, including shooting at refugees and pursuing them into Nepalese territory. In mid October 2003, a Chinese border security fired upon a group of 34 Tibetan refugees while they were attempting to cross into Nepal over Nangpa la. The incident took place two kilometers above Gyaplung at the glacial lake of Tso Tangyura. "When the machine gun fire started hitting around us, we ran in all directions,"

a 25-year-old male Tibetan told ICT in Kathmandu. “We ran back where we came from just trying to avoid the army. After hiding from the gun blasts for many hours, we climbed over Nangpa la in the middle of the night and walked the entire day on the Nepal side as we were so scared.” Only 17 of the 34 successfully made it over the Nangpala. The border police caught the others, and it is not known if any of those who were apprehended had been wounded or killed during the shooting incident.



Elevation 19,000 feet. A yak caravan traverses the Nangpa mountain pass from Nepal (west) to Tibet (east). The smooth surface belies the shifting glacial conditions. This photo was taken in September 2003, a day before a 17-year old Tibetan girl fell into a crevasse (just above the left end of the caravan pictured) and was lost after her companions failed in their attempts to pull her out with a rope made from their clothing.

In September 2003, a 17-year old girl died after evading the border police near Tragmar when she fell in a crevasse on the Tibetan side of Nangpa la. "We decided it would be safer to move at night but we lost our way," a companion of the deceased girl told ICT after arriving in Kathmandu. "My friend slipped and fell into the deep ice crack. We all tied our belts and shirt together attempting to pull her out but the makeshift rope kept snapping. After some time, we couldn't hear her voice coming from the ice crack anymore," he said. The group told ICT that they were traveling at night to avoid detection by Chinese border security, because they had heard from other Tibetans that the security was very aggressive in that area, including stories of Chinese police shooting at fleeing Tibetan refugees.

These reports followed a disturbing October 2002 incident that was made public in 2003. According to western mountain climbers who reported these events to ICT, a group of Tibetan refugees was discovered by Chinese police, who pursued them across the Nepalese border, firing their weapons. Nepalese police in Namche Bazaar, the main trading village south of Nangpa la, reported to ICT human rights monitors shortly after the incident that, "during our investigation of the Chinese border incursion, we collected at least a dozen spent rifle shell casings as far south as Khanjung on our side of the pass."³⁴ The Nepalese government did not make any public remonstrations to the Chinese government at the time of the incident or since.

New Refugee Prison in Shigatse, Tibet

In December 2003, after receiving confirmation from former prisoners and photo-documentation by independent monitors, ICT released information on the "Snowland New Reception Center," the official name of a previously unknown large prison in Shigatse, Tibet, specifically for Tibetans caught attempting to flee to or return from India or Nepal. The name of the new prison is similar to the name of the refugee reception centers for Tibetans administered by the Central Tibetan Administration of His Holiness the Dalai Lama (CTA) in Kathmandu, Nepal, and New Delhi and Dharamsala, India, as well as the smaller "reception centers" that the Chinese government has constructed just inside the border in recent years for returning Tibetan "compatriots."³⁵ The literal translation of the signage posted in front of the new Shigatse prison is "Snowland New Reception Center" (Tibetan: *khangjong nelenkhang sarpa*). The name for the CTA reception centers is "Tibetan Refugee Reception Center" (Tibetan: *bhoeme kyabjol nelenkhang*).



The “Snowland New Reception Center,” a prison in Shigatse for Tibetans caught attempting to flee to or return from India or Nepal. *Photo Courtesy of Lynx Photos.*

The prison is set off from residential and commercial areas to the southwest of Shigatse and is across from an area known as Dechen Podrang. Dechen Podrang was the traditional summer residential area for the previous Panchen Lamas and often was used for public religious sermons and blessings.

ICT researchers were told that the prison previously had been used as housing and office headquarters for a Chinese construction company. During the SARS outbreak in the summer 2003, some of the buildings inside the compound were reportedly used for a short time as an emergency epidemic center, according to local government workers in Shigatse.

Former inmates reported to ICT that there were approximately 300 prisoners in detention in June 2003 and by November there were an estimated 450 to 500 prisoners. Nearly all of the prisoners were caught at Nangpa la or near the Chinese-Nepal Friendship Bridge border crossing at Dram, the main commercial crossing at the Tibet/Nepal border. Refugees caught coming back from India are treated more harshly and receive longer sentences than those who are caught trying to leave Tibet. Tibetans who have served sentences in the new prison or at Nyari prison in Shigatse report that most individuals caught at the border serve a prison sentence of three to five months, during which they receive beatings and torture regularly – most commonly with an electric baton – and must perform hard labor, usually road building in and around Shigatse.

According to Tibetans who were detained at the Shigatse prison for trying to flee Tibet without papers, there were no judicial proceedings prior to or during their detention. Former prisoners also reported that in addition to the average three to five month sentences, many prisoners are fined between 1,700 - 5,000 yuan (US \$212 - 625). However, family members often have to pay double the amount of the fines or more in bribes in order to secure the prisoner's release. One relative reported that he had to visit the prison seven times and bribe officials with bottles of liquor and meals before they would accept payment of the fine.

In addition, each former detainee that ICT interviewed reported that he or she had to sign a document pledging that they will never again attempt to leave the People's Republic of China to go to India, and their family members also had to sign as guarantors that the prisoner will not try to flee again. "When I left, I knew my relative could go to prison in my place," said one former prisoner. The practice of securing guarantors for former political prisoners is used in Tibet to ensure probationary stipulations are followed, as well as to dissuade former prisoners from leaving Tibet.

The head of "Snowland New Reception Center" in Shigatse is reportedly Chinese and spends little time in Shigatse, while his deputy is a Tibetan from Derge (Chinese: Dege) in Sichuan Province. In December, 2003, there were approximately 160 employees at the detention facility, excluding police, army and paramilitary security personnel, of which less than 20 percent were Tibetans, according to former prisoners. ■

- On April 15, 2003, the Nepalese Department of Immigration (DOI) office in Kathmandu jailed a group of 21 Tibetan refugees who had been arrested by Nepalese police more than a week after crossing the Nangpa mountain pass. It was a fairly common group of Tibetan refugees: mostly children and their guardians, a few monks and a guide. When the TRTC staff in Kathmandu learned of their arrest, they initiated the usual process for having the group turned over to UNHCR for processing. However, the next day, officials of the Home Ministry signaled their intentions to charge the Tibetans with illegal entry. During an unusually frank discussion with human rights monitors on April 16, Nepalese officials said they planned to hand over the Tibetans to Chinese authorities for repatriation.

On April 17, a UNHCR protection officer appealed for the release of the Tibetans into their custody on the usual humanitarian grounds but was refused by the DOI. Later that same day, the DOI issued an administrative ruling against the Tibetans for “illegal entry into the Kingdom of Nepal.” After a further appeal, three young children, ages six and nine, were turned over to the UNHCR. The other 18, including ten teenagers, were given heavy fines and default prison sentences of seven to ten months. Among those who remained in Nepalese custody was the father of one



May 31, 2003, 7:40 am, Kathmandu Police Club. A local Tibetan woman throws herself in front of a bus to block the forcible repatriation of 18 Tibetans inside. After Nepalese police drag her away, the bus speeds away. *Photo courtesy of Nick Dawson.*

of the young children that had been turned over to UNHCR. On April 18, ICT asked the DOI Director General, Subarna L. Shrestha, why the entire group had not been handed over to the UNHCR in accordance with the “gentlemen’s agreement.” He responded, “I do not know anything about a gentlemen’s agreement. If there is going to be agreement on what to do with those Tibetans, I must see it in writing from the [Home] Ministry.” ICT released this information in an April 18 press release, and began working to stop the refoulement.³⁶

Throughout April and May 2003, UNHCR, local Tibetans, and concerned governments mobilized to urge for the release of the 18 into UNHCR custody for processing. During this time, the Home Ministry conveyed to representatives of concerned governments both its intent to repatriate the Tibetans and the fact that China was pressuring the government to take steps to make Tibetans less welcome in Nepal. Upon learning that a number of the refugees were ill, both UNHCR and representatives of the local Tibetan community requested permission to have a doctor visit them in the immigration jail. The DOI denied this request.

After receiving a tip that the DOI was getting ready to move the refugees, on the morning of May 29, TRTC staff arrived at the DOI jail to pay the fines and once again attempt to get the Tibetans into protective UNHCR custody. To their horror, two Chinese Embassy officials were completing the paperwork for payment of the US\$1,713 in fines. Accompanied by four Nepalese police with the release documents, the Chinese officials waited to receive the Tibetans. Alerted to this turn of events by the TRTC staff, several Western embassies and the UNHCR immediately contacted the Immigration and Home Ministries to halt the turnover. They expressed strong objections to this departure from the established protocols for Tibetan refugees, and from Nepal’s obligations under customary international law regarding repatriation of asylum seekers. The Tibetans themselves initially refused to leave the jail cell where they were being held, barricading themselves in and loudly protesting any attempts to remove them.

This effort seemed to work and the Chinese Embassy staff left the DOI jail in the afternoon. Soon afterwards, however, the Tibetans were handcuffed and taken in a Nepalese police van to the detention facility at Hanuman Dokha Police Headquarters. In hope of providing some measure of protection, the UNHCR immediately lodged a written

request to the DOI for a chance to interview the Tibetans, and it copied this request to the Deputy Superintendent of Police. That evening a crowd of Tibetans gathered outside police headquarters in an attempt to prevent the possible handover of the refugees to Chinese custody.

In an ominous foreshadowing of the imminent action, the DOI asked UNHCR to return the three Tibetan children previously given over to UNHCR's care. The UNHCR refused, and informed the staff of the TRTC, where the three children were staying, of the DOI's disturbing request. Fearing they would be kidnapped by Nepalese or Chinese authorities, ICT informed the U.S. Department of State and asked them to warn the Nepalese government against taking any precipitous action to try to take the three young children back into custody.

On May 30, State Department officials lodged an official complaint about the actions of Chinese embassy staff in Kathmandu with the Chinese Ambassador to the United States, and with the Chinese Foreign Ministry in Beijing. At the same time, American and other Western diplomats in Kathmandu called on high level officials in Nepal's Foreign and Home Ministries, and in the Office of the Prime Minister, to deliver strong demarches urging the Nepalese government to turn the Tibetans over to UNHCR custody immediately. The concerns of dignitaries who were visiting Nepal to celebrate the 50th anniversary of the Everest summit were also conveyed directly to King Gyahendra.

At 5:45 a.m. on May 31, Nepalese police and Chinese embassy personnel began to load forcibly the 18 Tibetans from Hannaman Dhoka prison into a van. The van's license plates were covered but it appeared to be the same Chinese embassy vehicle that had been in front of the DOI jail two days earlier, during the Chinese embassy's first attempt to take custody of the refugees. Tibetans who had been holding a vigil at Hannaman Dhoka throughout the night and into the morning were cleared from the immediate area by police. Eyewitnesses in the area reported that some of the 18 cried out for help as they were forced onto the van. The van was driven to the Kathmandu Police Club, where the Tibetans were off-loaded and put on a bus, also with covered plates.

At this point, a Nepalese police escort vehicle joined the bus, followed by a car with human rights monitors in close pursuit. The 18 were driven out of Kathmandu, several hours to the border town of Kodari, and across

the China-Nepal Friendship Bridge where they were handed over at the Chinese checkpoint. Photographs taken at Kodari show the Nepalese police returning from the Tibet side carrying a box of what appeared to be “Qian Kun” (Heaven and Earth), a famous brand of liquor produced in Sichuan province.

Wangchuk Tsering, the Representative of His Holiness the Dalai Lama in Kathmandu, said in reaction to the incident, “the way the Chinese and Nepalese authorities have been working on this case together is unprecedented and makes us fear for the future of Tibetans in Nepal. It indicates the level of Chinese influence in Nepal.”

The International Reaction

The international community’s immediate reaction to this extraordinary event was shock and condemnation. Many Western embassies in Kathmandu delivered strongly-worded demarches to the Nepalese government. UNHCR, from its headquarters in Geneva, issued a highly critical statement on the deportation, calling it “a blatant violation of Nepal’s obligation under international law.”³⁷

In a public statement issued immediately after the deportation, the U.S. Department of State said:

“We are outraged by this development. Our embassy has demarched the Nepalese government at the highest levels and more broadly this is a long-standing issue that is often raised in Kathmandu. Senior U.S. government officials met recently with People’s Republic of China and Nepalese officials in Washington and made it well known our feelings on this issue. The United Nations High Commission for Refugees has called the return of the 18 Tibetans to China without a status determination to be a clear violation of international law.

“We condemn the behavior of Chinese diplomats in Nepal and we call on the government to Nepal to return to the previous practice of allowing Tibetans to seek protection in Nepal for onward resettlement to India.”³⁸

In addition to issuing strong demarches to the Nepalese government in Washington and Kathmandu, the United States demarched the Chinese government in Washington and Beijing over the incident. This was the first time that the United States had ever demarched the Chinese government over an incident related to the treatment of Tibetan refugees in Nepal.

The European Union issued a statement that it was “seriously concerned” about the forced repatriation of the refugees and said that the incident “clearly violates humanitarian principles and contravenes international law.” Both the Nepalese and Chinese government were quick to deny any wrongdoing on their part.

During a June 6 press conference, the Chinese Foreign Ministry spokeswoman Zhang Qiyue warned that the incident should not be “politicized,” calling it a simple case of illegal immigration: “Recently the Nepalese police seized 21 illegal immigrants from China. They left China illegally via Tibet. And, according to the normal practice of handling illegal immigrants in the world, after verifying their identities, 18 of them were repatriated to China on May 31. As to how China will handle this case, it is a domestic issue and I am not so clear about it.”³⁹

The official Chinese news agency later issued stories that the Tibetan “illegal immigrants” were being quarantined because it was feared they had Severe Acute Respiratory Syndrome (SARS), and that they were to be transported to prison in Shigatse.⁴⁰

Although the Nepalese Home Ministry sought to soften criticism by claiming that this group of Tibetans was “a special case,” the then-Foreign Minister, Narendra Bikram Shah, took a contradictory position when he told the *Kathmandu Post* on June 2 that, “The standard practice is that every time we nab the Tibetans fleeing from the Tibetan Autonomous Region of China, we launch a thorough investigation into their allegations of torture and persecution in Tibet and either deport them or hand them over to UNHCR. This time, too, same procedures have been followed.”⁴¹

Gulia Ricciarelli-Renawat, the UNHCR Protection Officer who was directly involved in the incident, reacted, “If the Minister has been rightly quoted then I am surprised. Of course every government carries out its own investigations to an extent, but I have not heard of things being done in this way by Nepal before. Normally the procedure is for those Tibetans who do arrive in Nepal to be interviewed by the UNHCR and, if their cases are of concern according to our mandate, they are sent on to India.”⁴² The TRTC staff, who had managed to speak with the group through the bars of the Nepalese jail, determined that twelve had fled in hope of securing a Tibetan education for themselves or their children, and four monks and one female farmer had hoped to join monastic communities in India.

Direct Pressure from US Congress Yields Long-Sought Written Policy

Senator Dianne Feinstein, whose family has ties to the Himalayan region through her family's humanitarian work, had repeatedly made her concerns for the fate of the 18 Tibetans known to the Nepalese government during the spring months. After the May 31 refoulement, Senator Feinstein promptly withdrew from Senate consideration a garment bill that would have given Nepal duty-free and quota-free access to U.S. markets for two years. In a letter to the Nepalese government, Senator Feinstein informed them that her decision to withdraw her support from this legislation was directly attributable to the deportation of the 18 Tibetans.

In addition, other members of the US Congress reacted strongly to this unprecedented violation of international refugee protocol. A bipartisan group of members of the U.S. House of Representatives, led by Congressman Tom Lantos, the senior Democrat on the House International Relations Committee, wrote then-Prime Minister Thapa expressing their outrage over the deportations. This letter stated that the Members were "particularly troubled by the evident collusion between a country of refuge and a country of persecution to forcibly repatriate refugees, and deny UNHCR access to them."⁴³ The Members concluded their letter by threatening to block all non-humanitarian assistance unless Nepal provided a written guarantee of its intention to return to its previous policy of allowing Tibetans safe passage.⁴⁴

The Chairman of the House International Relations Committee, Congressman Henry Hyde, wrote letters to both the Nepalese and Chinese ambassadors to the United States, expressing his concern about the failure to follow international norms and established practices in the treatment of the 18 Tibetans who were deported.⁴⁵

The House-passed version of the Foreign Operations Appropriations Bill for fiscal year 2004 contained further evidence of the seriousness of Members' concern about "inadequate protection for Tibetan refugees transiting through Nepal," referring to the May 2003 repatriations as "a breach of the long-standing agreement that the Nepalese authorities would turn Tibetans over to UNHCR for processing."⁴⁶ The Committee directed the State Department to report to the Committee concerning Nepal's cooperation with UNHCR in processing Tibetan refugees prior to the notification to the Committee of any assistance to Nepal in fiscal

year 2004.⁴⁷ The Senate included similar language in its version of the bill that barred “assistance to the Government of Nepal until the Secretary of State certified that Nepalese authorities are cooperating with the UNHCR and other international organizations on issues concerning the protecting of refugees from Tibet.”⁴⁸

The Nepalese government’s initial response to all these initiatives was to deny that they had changed their policy, and assert that the 18 Tibetans “were sent back after the immigration authorities were fully convinced from their investigation that they were not seeking asylum, but were a rare case of illegal immigration.”⁴⁹ The letter stated “the authorities were convinced that the Tibetans did not have anything which could be a cause of concern regarding their human rights abuses [sic] back home.”⁵⁰ Contrarily, the letter went on to assert that, although they had done nothing wrong, the Nepalese government would “try to avoid reaching such circumstances and the cases will not be repeated.”⁵¹ They attempted to prove they were back on track later that summer when 19 Tibetans were apprehended by Nepalese immigration and very publicly handed over to UNHCR.

In conversations with ICT staff throughout June and July 2003, congressional offices expressed deep frustration with the Nepalese government’s inadequate response to the concerns they were raising. These offices communicated their frustrations to the Nepalese embassy in Washington. They also asked the U.S. State Department to carry messages to the Nepalese government that their response was inadequate and that there was a serious intention to restrict assistance to Nepal and deny them textile tariff relief if there was no evidence of sincerity on the part of the Royal Nepal Government. The U.S. Embassy in Kathmandu reportedly conveyed these messages to Nepalese officials.

On June 24, Senator Feinstein responded to Prime Minister Thapa’s letter with a reply suggesting that the Nepalese government should enter into some sort of written memorandum of understanding (MOU) with the United States and UNHCR regarding the treatment of Tibetan refugees.⁵² Throughout July, Senator Feinstein’s staff engaged in a series of negotiations with representatives of the Nepalese government to facilitate some sort of written agreement.

These discussions culminated in a meeting that took place in late July between Senator Feinstein and Nepal's Foreign Secretary, Madhu Raman Acharya. Foreign Minister Acharya was in Washington leading a trade delegation to Washington, D.C., in an effort to reinvigorate the stalled textile legislation. Acharya attempted to provide Members of Congress with assurances about Nepal's good treatment of Tibetan refugees, to which Senator Feinstein and others continued to insist that such assurances must be put in writing and followed up by consistent good practices.

On August 4, Senator Feinstein received a letter from Foreign Minister Acharya, with which Nepal's newly adopted written refugee protection policy was sent as an attachment.⁵³ Senator Feinstein replied to Secretary Acharya on August 8, informing him that she had reinstated the Nepal textile tariff waiver legislation, and requesting additional clarification on a number of points. She asked for the Nepalese government to ensure that: protection of human rights would be extended to Tibetans who were legally resident in Nepal; that the new policy would be properly transmitted to all levels of the Nepalese government; and a copy of the policy, in the Nepali language, be provided to the U.S. Embassy, the UNHCR and the Dalai Lama's representative in Kathmandu.

During a December 2003 congressional staff visit to Nepal sponsored by ICT, Nepalese officials repeatedly touted the government's new "written policy" to congressional staff. However, as of the end of 2003, no official notification of the policy had been made to the UNHCR, and Nepalese officials admitted that the policy had not been transmitted in writing to the relevant police and army postings in the Solo Khumbu mountain region or the Tatopani region along the Friendship Bridge, the two main routes used by Tibetan refugees. The Chief District Officers in Solo and Tatopani districts confirmed to human right monitors that they had not received anything in writing from the Home Ministry or any other officials in Kathmandu related to the policy that had been sent to Senator Feinstein.

Imprisonment in Tibet

Immediately after crossing into Tibet on May 31, Chinese officials segregated four of the 18 Tibetans on suspicion that they were carrying the SARS virus. A Western human rights monitor who witnessed the refoulement from the Nepal side of the border told ICT that there were at least a dozen personnel in white masks and gowns just over the Friendship Bridge waiting for the group. No official reports were



May 31, 2003, 12:24 pm, Kodari, Nepal. This photo was taken through the window of the bus carrying the 18 Tibetans just 100 yards from the Nepal-Chinese Friendship Bridge and Tibet border. *Photo courtesy of Nick Dawson.*

published as to whether or not the inmates actually had the virus, but ICT has received information from one of the four who was quarantined that indicates that SARS was not the cause of their illnesses.⁵⁴ After spending eleven days in a prison in Nyalam at the Tibet/Nepal border, where the Tibetans were reportedly beaten and tortured, most of the group was taken to a prison in Shigatse. The four men suspected of carrying SARS remained quarantined in Nyalam.

Radio Free Asia reported on July 25 that eight or ten of the deportees had been released after their fines were paid.⁵⁵ According to a Reuters News Service report on August 25, Jampa Phuntsok, Governor of the Tibet Autonomous Regions (TAR), claimed during a press conference in Lhasa that, as of the third week of August, all 18 Tibetans had been released and returned to their homes. "If they were farmers, they're farmers now. If they were nomads, they're nomads now," he reportedly said.⁵⁶ In addition to paying a 1,800 yuan fine (approximately US \$220), relatives or friends of 16 of the 18 Tibetans were obliged to pay additional bribes of US \$400 - \$620 to local authorities.

ICT interviews with those refugees who were able to escape to Nepal again paint a somewhat different picture. ICT has interviewed a number of Tibetans who had been in the new "reception center" prison (see above) in Shigatse with the group of 18. These former prisoners told ICT that seven of the 18 were still in prison as of the end of September.



May 31, 2003, 1:30 pm, Kodari, Nepal. Nepalese police return from the Tibet side of the Nepal-China Friendship Bridge after handing over 18 Tibetans to Chinese border security. One is carrying a box labeled *Qian Kun* (Heaven and Earth), a famous brand of liquor produced in Sichuan province, presumably a gift from Chinese border security. Photo courtesy of Nick Dawson.

By the end of October 2003, two of the 18 were left, including Dorje, a monk from Litang in Kandze Tibetan Autonomous Prefecture in Sichuan. He was reportedly in poor health. The former prisoners told of incidents in Shigatse prison where members of the group of 18 were shocked with electric batons, kicked in the genitals, forced to stand naked outside for long periods of time, and had sewing needles stuck under fingernails. "When they put the electric cattle prod in your mouth, you could feel it through your entire body and you faint from the pain," said one of the former prisoners. Another recalled guards beating members of the group of 18 while yelling, "Think about why you tried to go and see the Dalai Lama." One Tibetan reported that, "The four whom they thought had SARS were not treated as badly as the others because the guards did not want to touch them."

Of the two that remained in prison, ICT was told that the monk Dorje did not have any family or others who could pay the fines and bribes in order to obtain his release. According to other reports ICT received, the person that the Chinese believed to be the guide was sent from Shigatse to a prison in Lhasa, where he remained as of the end of 2003. This man also reportedly suffered some of the worst beatings and torture of the group. ■

- Although the May 31 incident of the 18 Tibetans is the first known instance of direct involvement by Chinese embassy officials in the refolement of Tibetan refugees from Kathmandu – including paying the fines of the detainees – the process was strikingly similar to Chinese official involvement in the deportation from Kathmandu of three Uighur refugees who had sought refuge in Nepal.

The three Uighurs – Shaheer Ali, Abdu Allah Sattar and Kheyum Whashim Ali – were forcibly returned to China from Nepal in 2002. All three men were recognized as “persons of concern” by the UNHCR after their arrival in Nepal, and were awaiting third country resettlement at the time of their deportation. Shaheer Ali and Abdu Allah Sattar were detained by Nepalese immigration authorities in December 2001 and forcibly returned to China in January 2002. Kheyum Whashim Ali was forcibly returned in mid-2002. According to Amnesty International, Abdu Allah Sattar and Kheyum Whashim Ali were detained in the Xinjiang Uighur Autonomous Region, but their fates remain unknown.⁵⁷ Shaheer Ali was executed after being sentenced to death in March 2003.

On October 21, 2003 a report was posted on the Chinese website www.tianshan.net, accusing Shaheer Ali of leading a number of terrorist organizations, including the East Turkistan Islamic Movement (ETIM).⁵⁸ The Chinese authorities claim that ETIM was linked to a February 1997 demonstration in Gulja that they described as an incident of “beating, smashing and looting.”⁵⁹ Eyewitnesses reported that this was a peaceful demonstration by local people calling for equal treatment for Uighurs. The demonstration degenerated into violence after security forces fired into the crowd to disperse the protesters. Hundreds were arrested in the aftermath and many were tortured.⁶⁰

Before his abduction and detention by Nepalese police, Shaheer Ali gave an interview to Radio Free Asia in which he described eight months of torture while in prison in Xinjiang in 1994.⁶¹ The report was published by Radio Free Asia on October 23, 2003, a day after officials confirmed his execution. Shaheer Ali had requested that the RFA interview not be aired until he was “in a safe place.”⁶² ■

- While there were no further refoulement incidents from Kathmandu after May, there continued to be consistent reports of Nepalese authorities pushing Tibetans back across the border or handing Tibetans over to Chinese border personnel after the Nepalese government announced its new written “policy toward refugees.”

On August 5, a Tibetan woman reported to the TRTC that her 15-year old cousin and three other children had been forcibly repatriated from Tatopani. According to the woman, on July 27 she had paid a Nepali man some money to take her cousin over the border from the Tibetan border town of Dram. The woman had entered Nepal with a proper visa obtained from the Nepalese Consulate in Lhasa. After some days, she received a telephone call from her hometown in Tibet saying that her young cousin was in police custody in Dram. On August 10, TRTC staff who were traveling in the border areas to retrieve Tibetan refugees, learned that a local man near the Nepalese army checkpoint in Jiri, about 70 kilometers from the Tibet/Nepal border, had seen four Tibetan children being arrested and had heard that they were to be sent back to Tibet. The army reportedly handed these four children over to police or immigration officials in Tatopani, who then turned them over to Chinese custody, instead of escorting them down to Kathmandu for UNHCR processing or taking them into custody so they could be picked up by UNHCR.⁶³ This incident occurred the same week that the new written policy was transmitted to Senator Feinstein's office.

On August 4, TRTC staff had gone to Tatopani to bring three other children down safely to Kathmandu after they received a telephone call from Tatopani saying that three Tibetan minors had been abandoned by their guide and were in imminent danger of repatriation. The TRTC reportedly encountered stiff resistance from the Tatopani police in their efforts to take custody of the Tibetan children, but the police later relented after the TRTC staff asked for their names and ranks so that they could make a report to the UNHCR. In a casual conversation with one policeman, the TRTC staff was told that occasional returns of Tibetans take place at Tatopani, but put the blame on local immigration officials.

There were other reported incidents of forcible or attempted repatriation of Tibetans by Nepalese officials throughout 2003 that could not be confirmed by UNHCR. Volunteers from a group that works to educate Nepalese living in the areas where Tibetan refugees transit were told by

locals that Tibetans were routinely pushed back across the border by the police. In early December, TRTC staff received a report that Royal Nepalese Army (RNA) personnel operating in the Tatopani area reportedly arrested three Tibetans approximately 20 kilometers south of the Nepal-Tibet border. The army personnel transported the refugees in a van back to the border and turned them over to Nepalese immigration officials. DOI officials reportedly escorted them across the Friendship Bridge and handed them over to Chinese border security. Later that week TRTC staff informed UNHCR that Nepalese immigration authorities at Tatopani had attempted to refoule four Tibetan children on December 9. In a strange twist, Chinese authorities at the border refused to take custody of the four children, at which point the DOI personnel sent them to the TRTC in Kathmandu with a police escort.

When these incidents were raised during meetings with an ICT-sponsored congressional staff delegation to Kathmandu in December 2003, senior Nepalese government officials initially denied them. They reiterated their commitment to honor Nepal's policy of non-refoulement and humanitarian treatment of refugees, then blamed the army for any incidents that may have occurred. Despite the fact that DOI personnel were implicated in refoulement, the Home Ministry blamed the incidents on poor communication with the border areas and a lack of understanding of the government's policy by the security forces operating in the border areas under the Royal Nepal Army's unified command system (see "The Journey" for an explanation of the unified command).

Since the escalation of the Maoist insurgency in 2001, border security around the Friendship Bridge has come primarily under the jurisdiction of security forces operating under the unified command. The RNA functions under the Defense Ministry while the police and Immigration Department function under the Home Ministry. According to a senior RNA officer in Tatopani, army personnel have standing orders to hand any Tibetans who do not possess valid passports over to immigration authorities. Tibetan refugees nearly always dispose of all personal identification before crossing the Tibet/Nepal border in case Chinese border security apprehends them.

It is often the case that human rights monitors and the UNHCR learn of incidents of refoulement only after a Tibetan involved makes a re-attempt and arrives safely at the TRTC in Kathmandu. Local Nepalese living in the

Tatopani region along the China-Nepal Friendship Highway traditionally have been a reliable source of information regarding the abuse of Tibetan refugees. However, it is sometimes difficult to confirm these local reports or to substantiate charges of harassment or collusion and corruption among Chinese and Nepalese officials. The UNHCR will only consider a report to be official if either the Nepalese government confirms it or UNHCR is able to verify the report directly. If the Nepalese government denies a refoulement, UNHCR currently has little recourse. Because of the security restrictions on travel by UNHCR staff due to the Maoist insurgency, there were no border monitoring trips in 2003. (According to UNHCR, these trips are expected to resume in early 2004.) Without solid and complete information, incidents of refoulement, abuse, and extortion, often go unreported or unconfirmed. In recent years, Nepalese border officials have become more aware of international scrutiny and more reluctant to speak candidly with human rights monitors. The same is true of officials in Kathmandu.

Immigration officials have told ICT human right monitors and congressional staff delegations on numerous occasions in the last two years that if Tibetans arrested at the border do not specifically ask for asylum or claim to be a refugee, then they are be handed over to Chinese border police. However, previous incidents have shown that Nepalese border authorities generally have difficulty communicating with Tibetan refugees due to language barriers and the adversarial nature of the situation. Moreover, Nepal's new refugee policy recognizes that the responsibility for making status determinations rests with the UNHCR office in Kathmandu, not Nepalese security or immigration personnel.

Despite repeated requests from UNHCR and concerned governments that they do so, the Home Ministry to date has not provided written copies of the government's refugee policy to personnel or commanders posted in the border areas or otherwise trained them on the government's policy. Nepalese officials also continue to talk in meetings with foreign governments about how they are under tremendous pressure from China to enforce immigration laws in the case of Tibetans. The growing collusion between the Nepalese and Chinese border authorities creates strong incentives for the Nepalese officials to disregard normal protocol for dealing with Tibetan refugees. ICT continued to receive disturbing reports about the endemic corruption of the Nepalese officials serving in the border areas.⁶⁴

Even as they insist that Nepal is upholding its international obligations on the transit of Tibetan refugees through to India, Nepalese government officials seek to excuse or deny that abuses and forcible returns of refugees continue to occur. While Nepal's new written policy on refugees was a welcome development in 2003, the apparently inconsistent application of the policy remains a cause for concern. ■

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- According to the UNHCR Global Report for 2002, there were 20,100 “persons of concern” of Tibetan origin residing in Nepal in 2002.⁶⁵ The authorities have allowed these Tibetans, who arrived in Nepal before January 1, 1990 to stay in Nepal legally. UNHCR characterizes them they as largely self-sufficient and not requiring assistance from UNHCR.⁶⁶ Tibetan refugees residing legally in Nepal are eligible to receive a refugee identity card (RC) that establishes their legal right to stay in the country.

Although RC possession protects individual Tibetans against refoulement, it provides limited rights but does not guarantee stability for Nepal's Tibetan population. In addition to the systemic failure of the Nepalese government to register all eligible Tibetans, there continue to be systemic irregularities related to the requirement that Tibetans must renew their RC at the local district office. According to the Tibetan Welfare Office in Kathmandu, there are 4,617 Tibetans who have formally applied for RC's with the Nepalese government and the UNHCR. The UNHCR works with the Nepalese government to facilitate the issuance of identity cards for Tibetans,⁶⁷ but there is currently no consistent process for issuance of new cards or renewal of existing cards.

The RC itself conveys restrictions. Refugees are not allowed to participate in politics, or to own businesses, houses, vehicles, land or other property. In the early 1960's, the Nepalese government arranged to provide Tibetan refugees with land for resettlement. They created six temporary settlements: Jialsa in Solu Khumba, Dhorpatan in western Nepal, Jawalakhel in Kathmandu, Tashi Palkhiel in Pokhara, Chairok in Mustang, and Rasuwa in Shabrubensi. After the last groups of Tibetan guerilla forces laid down their arms in 1974, four additional settlements were created. As the Tibetans have no right to own property, the government conveyed the land title to the Nepal Red Cross.

Tibetans' ability to secure employment is curtailed, as the RC does not convey a legal right to work. They have limited access to educational opportunities in Nepal, and are not eligible for admission to universities. It is difficult to get the necessary travel document for crossing international borders. Though Nepalese law permits naturalization, the government does not view citizenship as a viable option for Tibetans even though they have resided in Nepal for decades. As a result, even those Tibetans who legally reside in Nepal are not considered firmly resettled.

In 2003, Tibetans legally residing in Nepal continued to face difficulties in obtaining permission to celebrate publicly significant community events. The Nepalese police barred fewer public Tibetan events than in 2001-2002, but only because Tibetan leaders chose to cancel public gatherings themselves rather than face confrontation with Nepalese authorities. This approach has been taken on the direction of the Tibetan leadership in exile, which has encouraged Tibetans not to cause any inconvenience for their host country. For example, the Democracy Day celebration on September 2, and International Human Rights Day, that also marks the occasion when the Dalai Lama was awarded the Nobel Peace Prize, on December 10 were privately observed. "We knew the authorities would stop the events," Wangchuk Tsering, the Dalai Lama's representative in Kathmandu, told ICT, "We know that our host country continues to be pressured by the Chinese. And we have no recourse when the authorities in Kathmandu move to stop us."

Losar: Tibetan New Year

In 2003 as in the past two years, the Tibetan community in Kathmandu was forced to severely curtail their celebrations of Tibetan New Year, or *Losar*.

Tibetans began holding New Year's celebrations at the Bouddha Stupa in the mid-1960s when as refugees, they began taking up residence near the historically important pilgrimage site. Carrying the Dalai Lama's photograph around the stupa is a recent event, which has replaced the carrying of cloth-covered Buddhist scriptures around the stupa. Thousands of Tibetans would attend these ceremonies, dressed in their finest clothes, and throw tsampa (roasted barley flour) in celebration.

Those days seem to be gone for good. During Losar celebrations in March 2003, the Tibetans were forced to confine their celebrations to

the compound of a small monastery in order to avoid police harassment. Even with these precautions, the Dalai Lama's representative had to make representations to the Nepalese authorities that the Tibetan community would not engage in any restricted political activities during Losar.

Referring to the last two years of disruption of religious ceremonies in Bouddhanath, the center of Tibetan culture in Kathmandu, by Nepalese police on order of the Home Ministry, Tsering said, "As we couldn't have the Dalai Lama's photo, we chose to take our celebration elsewhere."

Nepalese authorities regularly make statements that no anti-China activities will be allowed on Nepal soil. The Nepal Home Ministry, and the police department that works under them, began restricting the display of the Dalai Lama's photograph outside of monasteries and in public places in 2001, informing the Tibetan Welfare Office and the Dalai Lama's Representative that the photograph was a de facto political statement.

Tsering Topgyal, president of the Tibetan Youth Club in Kathmandu, told ICT, "It is clear that Nepal now agrees with China that the Dalai Lama is a politician, not a religious leader."

Some among Kathmandu's Tibetans believe it is not necessary to carry the Dalai Lama's photo, especially if it means disassociating their celebration from the Bouddha Stupa. A majority of Tibetans however, maintain that they have the right to assemble peacefully with the Dalai Lama's photo, regardless if he is a political or religious leader, and believe that giving in to Nepalese demands on this issue further empowers the Chinese to pressure Nepal to muzzle the Tibetan community. Young Tibetans have occasionally defied Nepal's restrictions on publicly displaying the Dalai Lama's picture on holidays.

The Dalai Lama's Birthday

The Tibetan community in Nepal traditionally celebrates the July 6 birthday of the Dalai Lama with prayers, lighting votive candles and burning incense, and processing around the Bouddha Stupa. In accordance with standing instructions concerning public events, in 2003, in the weeks ahead of July 6, the Representative of His Holiness the Dalai Lama sent written requests to the Home Ministry and Chief District Officer in charge of security for permission to conduct an outside event within the compound of a Tibetan boarding school and a dinner reception at

a hotel. Written permission was obtained and verified orally, providing that there would be no public display of the Dalai Lama's photograph. However, late on the evening of July 5, the Representative received a telephone call from the Chief of Police in Bouddhanath concerning "fresh orders from the Home Ministry" that the Tibetan community was now not allowed to carry out the Dalai Lama's birthday celebration at the school, hotel or anywhere, in any form, including in the monasteries.

In 2002, the Nepalese police cancelled an evening reception for the Dalai Lama's birthday at a hotel within 24 hours of the event, but a public event during the day was allowed to go ahead at another large stupa just outside Kathmandu, Swayambhunath, and was attended by thousands of Tibetans. The curtailment of the 2002 celebration was assumed to have been linked to a simultaneous visit to Beijing by the Nepalese king. Indeed, the Tibetan community had anticipated a return to a more accommodating position by the Nepalese authorities in 2003 following the tensions surrounding the May 31 refoulement.

On the morning of July 6, 2003, two Nepalese associations did go to the Bouddha Stupa for prayers and were joined by many Tibetans, although no formal ceremony occurred. The day progressed peacefully, with only an exchange of words between several Tibetan women and policemen.

Public Opinion in Nepal about Tibetans and China

Following the events of May 2003, Nepalese public opinion, which had been trending against Tibetan refugees for some years, seems to be hardening. With international condemnation of Nepal in the headlines, some commentators lashed out at western governments that seemed to be more concerned with the fate of the Tibetan refugees than the Nepalese people. While the leading voices were primarily those who were already identified as having pro-China bend, their views may be resonating with an ever larger slice of the Nepalese population. Coupled with the sustained propaganda effort the Chinese government has undertaken around its periphery, the punitive response by western governments' to the May 31 refoulement is exacerbating ill will towards Tibetans.

Madan Regmi, the Chairman of the China Study Center in Kathmandu, said the following as part of an opinion piece published in The People's Review, a weekly newsmagazine, on August 28, 2003:

"The freedom, which the so-called free Tibet movement cliques are enjoying in Nepal is in violation of our China policy itself. By subjugating to the foreign pressure our officials have been occasionally undermining the very foundation of Nepal-China friendship. It is surprising how consecutive Nepalese Governments have been allowing the 'representative' of the so-called Dalai Government in exile to have their office in Nepal and openly function as well in the name of 'refugee protection.' The UNHCR, a UN body to which people from countries like Nepal would like to have their high regards, has mostly been an instrument of these cliques, which have undermined Nepal's legal system and even indirectly promoted terrorism. UNHCR must play its legitimate role but not favorably on an issue that has been colored by international power politics."

Several stories in the local press about Western tourist boycotts of Nepal or Senator Feinstein's withdrawal of the textile legislation lashed out at Westerners and criticized them for hurting common Nepalis. At the same time, most Nepalese maintained a favorable view of China as a helpful neighbor that is building infrastructure and providing assistance, without criticism. Privately, Nepalese human rights activists and journalists expressed concern about the shift in public opinion on China. One journalist told ICT that it did not seem unreasonable to the average Nepali to help China by stopping "anti-China movements" in Nepal when China was such a generous neighbor that asked so little in return.

Within elite policy circles, China's approach seems to be more sophisticated, and targeted on issues that resonate in the prevailing security environment in Nepal. One illustrative example is the way in which Chinese officials have worked to promulgate the view that Tibetans are not refugees but illegal immigrants who are being trafficked through Nepal. This perspective was repeated by Nepalese officials in meetings

with congressional staff during recent ICT-sponsored trips to Nepal, and ICT researchers have heard this same line from Nepalese security personnel in the border areas. This perspective is also being picked up by Nepalese opinion makers. H.L. Shrestha, the former Chairman of the Foreign Relations and Human Rights Committee of the House of Representatives in Nepal, in August 2003 remarks to the China Study Center, said "Nepal should formulate a refugee policy and related law in view of the changes in international and regional situation as well as the need to make Nepal-China relation more cordial. It should, however, stop illegal immigration and human trafficking." ■

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- On November 18, 2003, nine Tibetan refugees serving lengthy jail sentences on immigration charges were released into the care of the UNHCR in Kathmandu after their fines (ranging from US \$1,000 to \$9,000 each) were paid by an anonymous source. In each case, a default sentence of ten years imprisonment had been imposed for non-payment of fines, and repeated humanitarian and legal appeals, and requests for a royal pardon with the support of Western embassies, between 2000 and 2002 had been unsuccessful.

In cases such as these, there is normally a predisposition among sympathizers against paying the fines in order to discourage extortion, while weighing the consequences to the prisoners of jail time. Nepalese and international human rights monitors consistently report on "structural weakness" in Nepal's legal system, including routine corruption, and mistreatment of those detained in Nepal's jails.

The nine Tibetans included four students, four Buddhist monks and a layman. Five of them were arrested while transiting Nepal, trying to voluntarily repatriate to Tibet. The other four were caught in the Bouddhanath area without proper documents. Those who could not prove otherwise were charged with having lived in Nepal illegally since January 1, 1990, the cut-off for Tibetans to legally resettle in Nepal, resulting in enormous fines. ■

- In December 2002, the Central Tibetan Administration reached an agreement with the Indian government that would allow Tibetan refugees to enter legally India from Nepal, and apply for an identity card upon arrival in India. The new system requires every Tibetan to sit for an interview with the Indian Consul at the Embassy in Kathmandu. This arrangement had been working relatively well, until a massive backlog developed at the reception center in Kathmandu during the winter months of 2003. During those months as many as 50 refugees arrived at the TRTC each day, while the capacity of the Indian Consul to conduct interviews was 15-20 per day. Efforts are being made to ameliorate the situation.

Once in India, the situation for new arrivals from Tibet is challenging. Children are sent to school; monastics are sent to monasteries and nunneries; and young people are given vocational training. Those who do not fall into these categories are sent to live in the settlements, with family members who are already there if possible. Young people who receive vocational training are encouraged to return to Tibet after they complete their schooling.

In recent years, the CTA has begun a process of reinvigorating the settlements where most long-staying Tibetans in India live. According to CTA, these settlements are at grave risk of being unsustainable in the future unless major reforms are undertaken soon. Due to a history of poor agricultural practices and a lack of investment in critical infrastructure, the settlements are no longer productive enough to support the Tibetan population. Moreover, the quality of life in the settlements is not attractive to young, educated Tibetans who were born in exile. These young Tibetans are increasingly leaving the settlements to seek opportunities in India's fast growing cities. The Tibetan leadership is increasingly concerned that this trend will cause a loss of cohesion among the Tibetan exile community in India, and is seeking to reverse or mitigate this trend. ■

- In *Dangerous Crossings 2002*, ICT carried forward its recommendations for the Nepalese and other governments, UNHCR, and concerned non-governmental actors regarding needed improvements in the situation of Tibetan refugees. Those recommendations have again been evaluated and revised to reflect the progress, or lack thereof, in improving the circumstances for Tibetan refugees during 2003. The primary change for the 2003 report is the inclusion of new recommendations for the government of the People's Republic of China.

For governments and non-governmental organizations (NGOs) generally:

1. Commend the government of India for providing a place of safety and ongoing humanitarian care to the Dalai Lama and Tibetans in exile and assuming the financial burden of such care despite India's limited resources.

Improved: The agreement between the Indian government and CTA to facilitate transit of Tibetan refugees worked smoothly for most of the year. However, the system has not been adequately resourced to deal with the fluctuating numbers of refugees, particularly the large numbers that arrive in the winter seasons. ICT encourages the Indian government, the UNHCR and the CTA to look for creative solutions to this urgent problem.

2. Commend the government of Nepal for shelter and hospitality to Tibetans in exile but express concern over incidents of refoulement and ill treatment of transiting Tibetans in border areas, as well as the arrest and imprisonment of Tibetan refugees transiting through Nepal.

Deteriorated: The May 31, 2003 refoulement of 18 Tibetan refugees from Kathmandu was a major setback in efforts to hold Nepal to its commitments on the treatment of Tibetan refugees. The collusion with Chinese officials and the blatant disregard of international norms shown by Nepalese authorities in this action was deeply disturbing. There were also other incidents of forced return throughout the year, mostly carried out at the border areas. There also continue to be difficulties for Tibetans legally resident in Nepal. Nepal cannot be characterized as a country of guaranteed safe passage for Tibetans seeking resettlement in India, nor can Tibetans living in Nepal legally be considered firmly resettled.

However, a congressional staff delegation to Kathmandu in December 2003 found a definite change in attitude among Nepalese officials on the issue of Tibetan refugees. Where the prior year they were hostile and disinterested in the situation of Tibetan refugees, in December 2003 they were more engaged and attempted to explain their situation in a more open way, while acknowledging that there were tremendous pressures from China and other problems. They asked for help and understanding, while attempting to explain their lapses.

Governments, UNHCR and NGO's should maintain vigilance in reminding the Nepalese government of its commitment to provide safe passage for Tibetan refugees. Governments should encourage and monitor Nepal's compliance as part of their routine bilateral relations.

3. Encourage an exchange of notes between the UNHCR and the Nepalese government that would formalize the "gentlemen's agreement."

Mixed Evaluation: The Nepalese government's new written policy toward refugees is an important development that arose directly from the international outcry over the May refoulement of the 18 refugees. While this document is significant, its impact has been limited because it has not been uniformly conveyed in writing to the appropriate personnel in the Nepalese government. Moreover, while it recognizes that UNHCR will make determinations about "person of concern" status, the policy has never been officially conveyed to UNHCR.

4. Recognize the UNHCR for the creativity of its approach in establishing a system to bring Tibetan refugees from border areas to Kathmandu.

Improved: The May 2003 events were a wake-up call for the UNHCR. Following this debacle, during which they were powerless to take any protective action, UNHCR staffed-up its Tibet work and began pushing for greater access to the border areas. UNHCR took their relations with Nepalese officials more seriously and took a more vigorous approach to their protection mandate in the second half of 2003.

5. Interested foreign embassies should expand their use of diplomatic and economic leverage to ensure that the government of Nepal provides basic human rights to Tibetan refugees legally resident in Nepal and affords those transiting through Nepal the full protection of the UNHCR.

Improved: Reaction among to the May 2003 incident among embassies in Kathmandu was swift and tough. Several embassies did threaten sanctions or inform the Nepalese government of pressure from their capitals to sanction Nepal over the refoulement. This pressure has limits, due to the overriding interests of most governments in maintaining the security and poverty alleviation programs they are running in Nepal. Governments should work to integrate these issues into their overall bilateral relations with Nepal.

For the Government of Nepal:

6. Continue to abide by the “gentlemen’s agreement,” which provides safe passage to all Tibetan refugees transiting through Nepal to India.

Deteriorated: The “gentlemen’s agreement” fell apart in the lead up and during the May 2003 incident. The new written policy that ostensibly has taken its place has been poorly disseminated and inconsistently applied.

7. With the UNHCR, formalize the “gentlemen’s agreement” through an exchange of notes.

No improvement: While there is ostensibly a new written policy in place for the Nepalese government, it has not been officially communicated to the UNHCR representative office in Kathmandu.

8. Allow border visits upon request by the UNHCR.

Improved: As of the end of 2003, UNHCR and the Nepalese government informed ICT that UNHCR would be making a trip to the border areas in January 2004. However, security concerns continue to limit the mobility of UNHCR within Nepal.

For the UNHCR:

9. Proactively find ways to overcome obstacles that currently exist to the safe transit of Tibetan refugees through Nepal, including seeking to formalize the “gentlemen’s agreement” with the Nepalese government.

Improved: Under stable leadership, UNHCR refocused attention on the problems of Tibetan refugees in the aftermath of the May 2003 refoulement. Due to security concerns related to the Maoist insurgency, there has been a breakdown in the informal system of reimbursing Nepalese

border officials for travel when they accompany Tibetan refugees to Kathmandu. To address this problem, the UNHCR empowered TRTC staff to travel to the border areas to pick up refugees and worked in cooperation with them on protection issues. Unfortunately, this system is reportedly creating the misimpression among some Nepalese security personnel and local people that the Tibetans are being trafficked.

Given the current climate toward Tibetans in Nepal, this is a dangerous trend. The protection mandate of the UNHCR would be better served by having UNHCR staff travel to pick up Tibetan refugees in border areas themselves, rather than TRTC staff, who may be viewed by Nepalese security with suspicion and hostility. UNHCR should request the Nepalese government to allow its staff access to the border areas for this purpose.

UNHCR should also continue to press for an official transmission of the new written refugee policy, in Nepalese, or some other written assurance from the Nepalese government that recognizes the role of UNHCR in making determinations regarding persons of concern, and reaffirms the government's commitment to non-refoulement of Tibetans.

10. Dedicate a protection officer with appropriate language skills (Nepalese and Tibetan) to be present in the Tibet/Nepal border regions.

Improved: The current UNHCR staff members working on the Tibetan refugee account are competent and dedicated. Where they lack Tibetan language skills, they rely on the TRTC staff for assistance. UNHCR has pressed Nepal for access to the border areas, and is reported to be considering a permanent posting of a Nepalese staff member in the border area. ICT strongly supports this initiative by UNHCR.

While the present UNHCR staff are engaged and doing admirable work, the team could be strengthened significantly by the addition of a Tibetan speaking staff member.

11. Provide an identification card to Tibetan refugees with their arrival and exit date from Nepal and which certifies them as "of concern" to the UNHCR.

No Change: The system of identification cards that was put in place in 2002 seems to be working well. Together with the new Indian government/CTA initiative to facilitate Tibetans' legal entry into India, Tibetans are better documented once they are in the TRTC system. However, the lack of a UNHCR imprimatur on the identification cards issued at the TRTC diminishes their value from a protection standpoint.

12. Look for greater opportunities to provide human rights trainings with border-based security personnel, especially at the peak flight season, and with police in Kathmandu.

No Change: The Nepalese government has not permitted UNHCR to conduct police training nor were they permitted to train personnel in the border areas. During the December 2003 congressional staff delegation, one staff member suggested to the Nepalese authorities that personnel who were being shipped out to border areas should be brought to Kathmandu for UNHCR training prior to their posting. ICT encourages UNHCR to follow up on this suggestion.

New recommendations for 2003-2004

For the government of the People's Republic of China:

13. Abide by its commitments under the 1951 and 1967 Refugee Conventions and international law; stop pressuring the Nepalese government to *refoule* Tibetan refugees and restrict the rights of Tibetans who are legally resident in Nepal; and address the underlying causes of Tibetan refugee flights through more responsible policies, including engaging in a dialogue with the Dalai Lama or his representatives to resolve the situation in Tibet. ■

As transmitted to United States Senator Dianne Feinstein on August 4, 2003, by Nepalese Foreign Secretary Madhu Raman Acharya; emphasis below as in the original transmission

- Nepal has a long track record of humanitarian approach to the refugees. It has provided asylum to refugees since 1959. At present, Nepal has given asylum to more than 132,000 refugees, which includes 100,000 Bhutanese refugees and several thousand Tibetan refugees.
- Although not a party to any international refugee conventions and therefore not bound by international legal obligations as such, Nepal has given shelter to refugees on humanitarian grounds. In view of her own socio-economic constraints and other limitations, Nepal's treatment of asylum seekers has earned appreciation from all over the world.
- Nepal understands and respects the humanitarian and human rights issues of the asylum seekers. The asylum seekers are treated in Nepal in accordance with international norms, practices and standards.
- Nepal fully cooperates with the UNHCR and allows the UNHCR in Kathmandu to assist the asylum seekers to be processed as refugees. Nepal appreciates the involvement of the UNHCR and the international community in the care and maintenance of the refugees in the country.
- Aliens, who declare their intention to seek asylum before the Nepalese authorities, are interrogated by the immigration authorities and the UNHCR is given access to them for their status determination. Such "persons of concern" are then processed accordingly through the UNHCR in accordance with the international norms and practices. His Majesty's Government allows the processing of the refugees by the UNHCR for resettlement to any third country.
- Voluntariness has been an accepted principle for the treatment of refugees in Nepal. Only persons seeking voluntary return shall be repatriated in accordance with international norms and practices. His Majesty's Government has a policy not to forcibly return refugees from its soil.
- **Nepal will uphold the principle of non-refoulement of the refugees. Nepal will not forcibly return any asylum seekers from its soil.**
- **Nepal will allow the UNHCR to verify and establish the status of people seeking asylum and will allow the UNHCR to process them without any hindrance.**

- 1 The principle of *non-refoulement* is enshrined in Article 33 of the 1951 Convention Relating to the Status of Refugees and is a well-established principle of customary international law. Thus, even governments that are not party to the Refugee Convention, are bound by obligations of *non-refoulement*. Article 33 states, in pertinent part: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom could be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.;" <http://www.unhcr.ch/protect> (select "Legal Protection", "1951 Convention and 1967 Protocol")
- 2 <http://www.unhcr.ch/protect> (select "Legal Protection", "States Parties to the Convention")
- 3 See ICT's *Dangerous Crossings* for 2001 (p. 18-23) and 2002 (p. 8-9) for a full explanation of the "gentlemen's agreement."
- 4 Nepali Times, *Nepal Feels the Heat over Tibet Deportations*, Navin Singh Khadka, June 20-26, 2003; The People's Review, "Illegal Immigration of Chinese Tibetans: Its Ramifications," Madan Regmi, September 11, 2003.
- 5 On June 1, 2001, Crown Prince Dipendra reportedly killed King Birenda and most of the royal family in a bloody murder-suicide. A year later, the king's brother who survived the massacre, Gyanendra, was enthroned. He subsequently dissolved the elected parliament and took control of government, justifying his action on the basis of poor performance by the elected government in dealing with fiscal crises, corruption and mismanagement, and inability to address the growing Maoist insurgency. During 2003, the government – which is appointed by the King – collapsed several times and there were extended periods of time where there was no prime minister in place. Nepal was under a state of emergency from November 21, 2001 to August 2002. Under the 2002 Terrorist and Disruptive Activities (Control and Punishment) Act (TADA), the security forces have the authority to arrest without warrant and detain suspects in police custody for up to 90 days. In both 2002 and 2003, Nepal recorded the highest number of "disappearances" of any country in the world. See Amnesty International's 2003 Annual Report for additional information: <http://web.amnesty.org/report2003/npl-summary-eng>.
- 6 Remarks of Ambassador Michael Malinowski, panel discussion on "The Maoist Insurgency in Nepal: Challenges for Building Peace and Democracy," sponsored by the Asia Society and the Woodrow Wilson International Center for Scholars, Washington, DC, June 17, 2003.
- 7 ICT interview with staff of the Tibetan Refugee Transit Center, Kathmandu, January 2004.
- 8 Due to the large influx of refugees into Nepal in December 2003, UNHCR and the TRTC do not have exact numbers for different categories of refugees. UNHCR reportedly completed processing of all refugees who arrived in 2003 only at the beginning of May 2004. However, the anecdotal evidence from ICT's field reporting indicates that trends in 2003 were consistent with past years. See International Campaign for Tibet, *Dangerous Crossings: 2002 Update*, Washington, DC, (2003), p. 7.

- ⁹ Country Report on Human Rights Practices for 2003, U.S. Department of State, February 25, 2004 (available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27768.htm#Tibet>).
- ¹⁰ Ibid.
- ¹¹ Freedom House, *The Worst of the Worst: The World's Most Repressive Societies*, 2004, p. 97; *Trials of a Tibetan Monk: The Case of Tenzin Delek*, Human Rights Watch, February 2004; *International Religious Freedom Report for 2003*, U.S. Department of State, December 18, 2003 (available at: www.state.gov/drl/irf/); *Congressional Executive Commission on China Annual Report for 2003*, 108th Congress, October 2, 2003 (available at: <http://www.cecc.gov/pages/annualRpt/2003annRpt.pdf>).
- ¹² U.N. Economic and Social Council, *Report on the September 2003 Visit of the Special Rapporteur on the Right to Education to the People's Republic of China*, November 21, 2003 (submitted to the UN Commission on Human Rights, March 25, 2004), UNDOC E/CN.4/2004/45/Add.1, p. 21.
- ¹³ Proceedings of the 60th U.N. Commission on Human Rights, Geneva, Switzerland, March 25, 2004.
- ¹⁴ U.N. Economic and Social Council, *Report on the September 2003 Visit of the Special Rapporteur on the Right to Education to the People's Republic of China*, November 21, 2003 (submitted to the UN Commission on Human Rights, March 25, 2004), UNDOC E/CN.4/2004/45/Add.1, p. 21.
- ¹⁵ Ibid, p.12-13.
- ¹⁶ Congressional-Executive Commission on China, *The Execution of Lobsang Dhondup and the Case Against Tenzin Delek: The Law, the Courts, and the Debate on Legality*, Washington, DC, February 10, 2003.
- ¹⁷ Human Rights Watch, *Trials of a Tibetan Monk: The Case of Tenzin Delek*, Vol. 16, No. 1, New York, NY, February 2004, p. 6.
- ¹⁸ Ibid, p. 6-7, 54-55.
- ¹⁹ Oral statement of Ngawang Sangdrol to the House Committee on International Relations, March 10, 2004, Washington, DC.
- ²⁰ The People's Review, *Issues Related to Refugees, Illegal Immigration and Human Trafficking from Tibet*, Hiranyalal Shrestha, Kathmandu, September 11, 2003. One U.S. dollar is equivalent to approximately 75 Nepalese rupees.
- ²¹ As cited in *Update on Tibetan Deportees: Nepal, China Issue Statements*, Kate Saunders, June 7, 2003, available at <http://www.freetibet.org/press/specialreport070603.html>.
- ²² Kathmandu Post, *China, Nepal Top Trade Bodies Underline Duty-Free Market*, November 24, 2003, reported that as little as 1% of Nepal's exports go to China, while up to 12% of Nepal's imports come from China (including Hong Kong).
- ²³ Kathmandu Post, *China Gives Assurance to Continue With 710 Million Rs. Aid*, October 18, 2003.
- ²⁴ Kathmandu Post, *China Facelift for Ring Road, Trolley Bus*, October 16, 2003.

- ²⁵ Kathmandu Post, *China to Open Two Checkpoints*, December 3, 2003.
- ²⁶ Agence France Presse, *Chinese Envoy Calls for Halt in Flow of Tibetans into Nepal*, November 14, 2003
- ²⁷ Ibid.
- ²⁸ People's Review, *China Supports Government in Fight Against Maoists*, November 20, 2003.
- ²⁹ People's Liberation Army Daily, *Honorable Title Awarded to Pali Frontier Defense Police Station*, Gai Jindong, December 29, 2003 (available at http://english.pladaily.com.cn/english/pladaily/2003/12/29/30031229001014_MilitaryNews.html).
- ³⁰ Ibid.
- ³¹ Ibid.
- ³² Tibet Information Network, *TIN News Update*, December 2, 2004 (translation of Xinhua article in the original Chinese from December 28, 2003).
- ³³ Ibid.
- ³⁴ As told to ICT human rights monitor. Khanjung is approximately 15 kilometers from the border inside Nepal.
- ³⁵ International Campaign for Tibet, *Dangerous Crossings: 2002 Update*, p. 20, Washington, DC (2003).
- ³⁶ International Campaign for Tibet press release, *Nepal Jails 18 Tibetan Refugees in Kathmandu, Intends to Deport to Chinese Authorities*, Washington, DC, April 18, 2003.
- ³⁷ Agence France Press, *UN Refugee Agency Protests Expulsion of 18 Tibetans from Nepal*, May 31, 2003.
- ³⁸ U.S. Department of State, *Press Statement on Handover of Tibetan Refugees by Nepal*, Washington, DC, May 31, 2003.
- ³⁹ As cited in *Update on Tibetan Deportees: Nepal, China Issue Statements*, Kate Saunders, June 7, 2003, available at <http://www.freetibet.org/press/specialreport070603.html>.
- ⁴⁰ Ibid.
- ⁴¹ Ibid.
- ⁴² Ibid.
- ⁴³ Letter to Prime Minister Surya Bahadar Thapa from Congressmen Dana Rohrabacher, Tom Lantos, Donald Payne, Frank Wolf, Eliot Engel, Joseph Crowley, Steven Rothman, Mark Steven Kirk, and Christopher Smith, June 16, 2003.
- ⁴⁴ Ibid.
- ⁴⁵ Letter to Deputy Chief of Mission (Acting Ambassador) Rudra Nepal from Chairman Henry Hyde, June 5, 2003; Letter to Ambassador Yang Jiechi from Chairman Henry Hyde, June 5, 2003.

- ⁴⁶ House Report 108-222, Foreign Operations, Export Financing, and Related Programs Appropriations Bill for Fiscal Year 2004, July 21, 2003.
- ⁴⁷ Ibid.
- ⁴⁸ Senate Rpt.108-106, Foreign Operations, Export Financing, and Related Programs Appropriations Bill, 2004, July 17, 2003.
- ⁴⁹ Letter to Congressman Tom Lantos from Prime Minister Surya Bahadur Thapa, June 30, 2003. Identical letters were sent to all of the signators on the Lantos letter. Letter to Senator Dianne Feinstein from Prime Minister Surya Bahadur Thapa, June 16, 2003.
- ⁵⁰ Ibid.
- ⁵¹ Ibid.
- ⁵² Letter to Prime Minister Thapa from Senator Feinstein, June 24, 2003.
- ⁵³ Letter to Senator Feinstein from Foreign Secretary Acharya, August 4, 2003. See Appendix: 2003 Written policy of the Nepalese Government.
- ⁵⁴ ICT was able to conduct interviews with five Tibetans who re-escaped after the *refoulement* as they arrived in Nepal and India between November 2003 and May 2004. Due to the risk to the individuals and their families inside Tibet, ICT cannot disclose the identities of these individuals or provide detailed information regarding their statements.
- ⁵⁵ Radio Free Asia, *China Releases Some Tibetan Asylum Seekers*, July 25, 2003.
- ⁵⁶ MSNBC Online, *Tibetan Escapees Now Farmers, Nomads Again – China*, August 25, 2003.
- ⁵⁷ Amnesty International press release, *Nepal: Forcible Return of Tibetans Unacceptable*, June 2, 2003; Amnesty International press release, *China: International Community Must Oppose Attempt to Brand Peaceful Political Activists as “Terrorists”*, December 19, 2003.
- ⁵⁸ Amnesty International alert, *China: Execution/Fear for Safety/Fear of Torture or ill-treatment*, October 24, 2003.
- ⁵⁹ Ibid.
- ⁶⁰ Ibid.
- ⁶¹ Radio Free Asia, *Executed Uighur Left Behind Tapes Detailing Torture*, October 23, 2003.
- ⁶² Ibid.
- ⁶³ Radio Free Asia, *Tibetan Refugees in Nepal Returned to Chinese Authorities*, August 8, 2003. *NB*: Under the “gentlemen’s agreement”, the UNHCR would reimburse the police for any travel expenses incurred while escorting Tibetan asylum seekers to Kathmandu, and will send someone to the border to pick up refugees if requested to do so by local authorities.
- ⁶⁴ Interviews conducted during ICT and other NGO monitoring trips to Nepal/Tibet border areas, March, April and November 2003.

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- ⁶⁵ U.N. High Commissioner for Refugees, *Global Report 2002*, Geneva (June 2003), p. 329. Available at: <http://www.unhcr.ch/cgi-bin/texis/vtx/publ> (hereinafter, UNHCR 2002 Global Report).
- ⁶⁶ U.N. High Commissioner for Refugees, *Global Report 2001*, Geneva (June 2002), p. 310. Available at: <http://www.unhcr.ch/cgi-bin/texis/vtx/publ>. In 2002, UNHCR reported providing assistance to 150 of the 20,100 Tibetan refugees who were legally resident in Nepal. (UNHCR 2002 Global Report, note 65).
- ⁶⁷ U.N. High Commissioner for Refugees, *Global Appeal 2004*, Geneva (December 2003), p. 197. Available at: <http://www.unhcr.ch/cgi-bin/texis/vtx/publ>.



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The International Campaign for Tibet is a non-profit membership organization that monitors and promotes internationally recognized human rights in Tibet. ICT was founded in 1988 and has offices in Washington DC, Amsterdam and Berlin.

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